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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,729	12/21/2001	Jaap M. Middeldorp	9250-13DVCTDV	6359
20792	7590	09/09/2004	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			KIM, YOUNG J	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	

1637

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

3M

**Advisory Action**

**Application No.**

10/036,729

**Applicant(s)**

MIDDELDORP ET AL.

**Examiner**

Young J. Kim

**Art Unit**

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12/21/01

10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): Applicants amendment received on August 6, 2004, amending the claims to overcome the art rejection under 35 U.S.C. 102(b) based on the broadest reasonable interpretation of the claims, to now require that the subsequence of SEQ ID NO: 1 encode EBV peptide that is immunochemically reactive with antibodies, necessitates new prior art search as well as issues under 35 U.S.C. 112, first paragraph as to whether Applicants were in possession or enabling any fragment of SEQ ID NO: 1 which not only encodes an EBV peptide but also immunoreactive with antibodies to the EBV. According to MPEP 714.13 states that applicants cannot, as a matter of right, amend any finally rejected claims, except when an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some way requires only a cursory review by the examiner. While applicants amendment have overcome the rejections under 35 U.S.C. 112, second paragraph, said amendment raises new issues under 35 U.S.C. 112, first paragraph which is more substantial, requiring "more" than a "cursory review." As such, the present amendment will not be entered .



YOUNG J. KIM  
PATENT EXAMINER



KENNETH R. HORLICK, PH.D  
PRIMARY EXAMINER

9/2/04